



DEPARTMENT OF HOMELAND SECURITY

U.S. CUSTOMS AND BORDER PROTECTION

Notice of Issuance of Final Determination Concerning Various Elliptical Exercise Machines and Option Package Kits

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (“CBP”) has issued a final determination concerning the country of origin of various elliptical exercise machines manufactured and distributed by Octane Fitness, and their option package kits that add from three products to the elliptical exercise machines. Based upon the facts presented, CBP has concluded that Taiwan is the country of origin of the elliptical exercise machines and two of the option package kits, and China for one option package kit, for purposes of U.S. Government procurement.

DATE: The final determination was issued on October 16, 2014. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR § 177.22(d), may seek judicial review of this final determination within [insert 30 days from date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Antonio J. Rivera, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade (202) 325-0226.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on October 16, 2014 pursuant to subpart B of Part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP has issued a final determination concerning the country of origin of various elliptical exercise machines, and their option package kits, manufactured and distributed by

Octane Fitness, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H248696, was issued under procedures set forth at 19 CFR Part 177, subpart B, which implements Title III of the Trade Agreement Act of 1979, as amended (19 U.S.C. 2511-18). In the final determination, CBP concluded that, based upon the facts presented, the assembly operations for the elliptical exercise machines performed in Taiwan, using a majority of Taiwanese components, substantially transformed the components into the various elliptical exercise machines. Therefore, the country of origin of the elliptical exercise machines is Taiwan for purposes of U.S. Government procurement. Furthermore, CBP concluded that the three option package kits for the elliptical exercise machines retained their respective countries of origin because the three kits were already in their final form before being packaged into the option kit. Therefore, for U.S. Government procurement purposes, the country of origin is Taiwan for two option package kits, and China for the other option package kit.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: October 16, 2014

Glen E. Vereb
Acting Executive Director
Regulations and Rulings
Office of International Trade

HQ H248696

October 16, 2014

OT:RR:CTF:VS H248696 AJR

CATEGORY: Country of Origin

Mr. Peter Joseph Hammond
Director of Operations
Octane Fitness
7601 Northland Drive
North Suite 100
Brooklyn Park, MN 55428

RE: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. § 2511); Subpart B, Part 177, CBP Regulations; Country of Origin; 23 Variations of Elliptical Exercise Machines and Option Package Kits

Dear Mr. Hammond:

This is in response to your letter dated September 30, 2013, forwarded to us from the National Commodity Specialist Division in New York, requesting a final determination on behalf of Octane Fitness (“Octane”) pursuant to subpart B of part 177, Customs and Border Protection (“CBP”) Regulations (19 C.F.R. § 177.21 *et seq.*). Under the pertinent regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of 23 variations of elliptical exercise machines (“Elliptical(s)”) and option package kits. We note that Octane is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and is entitled to request this final determination.

FACTS:

You describe the pertinent facts as follows. The items at issue consist of 23 Ellipticals produced in Taiwan by Octane. Three option package kits (“Option(s)”) can be added onto certain Ellipticals. You advise that each of the Ellipticals, without the Options, consist of two main assemblies: a base assembly and a console assembly. A significant majority of the components comprising the base and the console are stated to originate from Taiwan. The submitted bill of materials, stated to reflect an accurate proportion of materials used to produce the Ellipticals, lists 461 component items for the base assembly and 33 component items for the

console assembly. This bill of materials shows that the base is comprised of 450 Taiwanese components, 10 Chinese components, and 1 U.S. component, while the console is comprised of 31 Taiwanese components and 2 Chinese components. You state that the base and the console are produced in Taiwanese factories through an extensive assembly process. Once the assembly process is complete, the bases and consoles are brought together and tested in Taiwan, then packaged separately in Taiwan to facilitate shipment, before being imported from Taiwan to Octane's U.S. warehouses.

Along with the submitted bill of materials reflecting the country of origin of the components, you submitted a list describing the Ellipticals and photos illustrating the step-by-step assembly process in Taiwan.

A. The 23 Variations of Ellipticals

The Ellipticals are presented in charts titled "GSA Elliptical Cross Trainer Model (and Description)." The Ellipticals are further "grouped into like categories:" ten "Standing" Ellipticals, nine "Seated" Ellipticals, and four "Lateral" Ellipticals.

The ten Standing Ellipticals include two commercial grade Ellipticals (PRO310 and PRO370) and eight heavy commercial grade Ellipticals (PRO3700 and PRO4700). The PRO3700 and the PRO 4700 come in four different models: (1) the Touch Integrated 15" LCD TV embedded with Netpulse package; (2) the Attached Flat Screen TV package; (2) the 900 MHz Keypad package; and (4) the basic package, which is without the LCD TV, flat screen TV, or keypad.

The nine Seated Ellipticals, known under their trade name "xRide," include eight heavy commercial grade Ellipticals (xR5000 and xR6000) and one commercial grade Elliptical (xR650), which has total body seating and moving arms. The xR5000 has only lower body seating, while the xR6000 has total body seating and moving arms. The xR5000 and the xR6000 come in four different models: (1) the Touch Integrated 15" LCD TV embedded with Netpulse package; (2) the Attached Flat Screen TV package; (3) the 900 MHz Keypad package; and (4) the basic package, which is without the LCD TV, flat screen TV, or keypad.

The four Lateral Ellipticals, known under their trade name "LateralX," are all heavy commercial grade Ellipticals under the LX8000 series, which is a total body Elliptical that is laterally adjustable. The LX8000 comes in four different models: (1) the Touch Integrated 15" LCD TV embedded with Netpulse package; (2) the Attached Flat Screen TV package; (3) the 900 MHz Keypad package; and (4) the basic package, which is without the LCD TV, flat screen TV, or keypad.

These Ellipticals are described to have a similar base and console assembly process, which takes about eight weeks to manufacture in factories located in Taiwan with over 100 workers assembling the mostly Taiwanese components, one-by-one, until the product is completed.

B. The Base Assembly Process

The base assembly process takes place in Taiwan and is described as follows:

1. Obtaining over 80 feet of steel tubes and sheet metal;
2. Cutting the steel tubes with an automated sawing machine into about 20 pieces;
3. Cutting holes in some of the steel tubes using automated equipment in machining workshop;
4. Bending some of the steel tubes into precise shapes using automated tube bending machines;
5. Attaching the separate steel and metal pieces into subassemblies in a welding workshop using automated welding machines;
6. Powder coating process to clean, heat, paint, and dry the parts;
7. Cleaning and heating through a variety of chemical baths and preparing the parts for painting;
8. Painting and drying; and
9. Assembling the final base product.

C. The Console Assembly Process

The console assembly process takes place in Taiwan. The Taiwanese components consist of a circuitboard assembly, plastic components, cable assemblies, and a keypad. The Chinese components consist of a power supply and power cord. The process is described as follows:

1. Wave soldering electronic components to a circuit board using surface mount technology;
2. Molding the plastic components by injecting Taiwanese material into a mold machine;
3. Assembling Taiwanese wires and connectors for the cable assemblies; and
4. Assembling the keypad.

Once complete, the consoles provide the Ellipticals with automated control by adjusting the motion of the hand and foot pedals; fluctuating resistance to the pedals to vary workouts; and tracking the time exercised, calories burned, and heart rate of the Elliptical's user.

Lastly, the final assembly brings together the base assembly and console assembly. The bases and consoles are then packaged separately and imported from Taiwan to Octane's U.S. warehouses.

D. The Assembly Process for the Options

You advise that three Options are available: stationary side steps; a "Cross Circuit Pro kit," consisting of adjustable dumbbells and stationary side steps; and an upper body lockout kit. Minor variations of the Options are available depending on the model of Elliptical machine they serve.

The stationary side steps Option is available for the PRO3700 and PRO4700 Ellipticals. It allows users to step onto platforms on each side of the machine. The stationary side steps undergo an assembly process similar to the base assembly process, where a Taiwanese factory

takes steel and sheet metal through automated machines and conveyer systems to cut, bend, weld, clean, heat, paint, and then dry the final stationary side steps product. Under this Option, the stationary side steps product is shipped by itself from Taiwan to Octane's U.S. warehouses.

The Cross Circuit Pro kit Option provides the stationary side steps and the adjustable dumbbells in a package for the PRO3700, PRO4700, and LX8000 Ellipticals. Unlike the stationary side steps assembly process, the adjustable dumbbells are first made in China before being brought to Taiwan. In Taiwan, the adjustable dumbbells are packaged together with the stationary side steps as the Cross Circuit Pro kit. This kit is imported as one unit from Taiwan to Octane's U.S. warehouses.

The upper body lockout kit Option is available for the PRO370, PRO3700, and PRO4700 Ellipticals. It allows users to isolate lower body exercises by preventing upper body movements. The upper body lockout kit undergoes a similar assembly to the base and the stationary side steps assemblies. Here, a Taiwanese steel tube is processed through a Taiwanese supplier that also uses automated machines and conveyer systems to cut, bend, weld, clean, heat, paint, and then dry the final upper body lockout kit. This kit is imported from Taiwan as a unit to Octane's U.S. warehouses.

ISSUE:

What is the country of origin of the Ellipticals and the Options for the purpose of U.S. Government procurement?

LAW AND ANALYSIS:

Pursuant to subpart B of part 177, 19 C.F.R. § 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also, 19 C.F.R. § 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of part 177 consistent with the Federal

Acquisition Regulations. *See* 19 C.F.R. § 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 C.F.R. § 25.403(c)(1). The Federal Acquisition Regulations defines "designated country end product" through the following relevant definitions:

Designated country end product means a WTO GPA country end product, an FTA country end product, a least develop country end product, or a Caribbean Basin country end product.

World Trade Organization Government Procurement Agreement (WTO GPA) country means any of the following countries: Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, or United Kingdom.

WTO GPA country end product means an article that—

- (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or
- (2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

48 C.F.R. § 25.003.

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States*, 573 F. Supp. 1149 (Ct. Int'l Trade 1983), *aff'd*, 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. Factors which may be relevant in this evaluation may include the nature of the operation (including the number of components assembled), the number of different operations involved, and whether a significant period of time, skill, detail, and quality control are necessary for the assembly operation. *See* C.S.D. 80-111, C.S.D. 85-25, C.S.D. 89-110, C.S.D. 89-118, C.S.D. 90-51, and C.S.D. 90-97. If the manufacturing or combining process is a minor one which leaves the identity of the article intact, a substantial transformation has not occurred. *Uniroyal, Inc. v. United States*, 3 CIT 220, 542 F. Supp. 1026 (1982), *aff'd* 702 F.2d 1022 (Fed. Cir. 1983). In a number of rulings (*e.g.*

Headquarters Ruling Letter (“HQ”) 732498, dated October 3, 1989, and HQ 732897, dated June 6, 1990), CBP stated, “merely packaging parts of a kit together does not constitute a substantial transformation.”

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item’s components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, factors such as the resources expended on product design and development, extent and nature of post-assembly inspection and testing procedures, and the degree of skill required during the actual manufacturing process may be relevant when determining whether a substantial transformation has occurred. No one factor is determinative.

In HQ 735608, dated April 27, 1995 and HQ 559089, dated August 24, 1995, CBP has stated: “in our experience these inquiries are highly fact and product specific; generalizations are troublesome and potentially misleading.”

In HQ 735368, dated June 30, 1994, CBP held that the country of origin of a bicycle assembled in Taiwan with components made in several countries was Taiwan. CBP stated that because the bicycle was assembled in Taiwan and one of the bicycle’s most significant components, the frame, was made in Taiwan, the country of origin of the bicycle was Taiwan. Although the other components came from several different countries, when they were assembled together in Taiwan, they each lost their separate identity and became an integral part of a new article of commerce, a bicycle.

In the instant case, the assembly of the Ellipticals is comprised of two major assemblies, the base assembly and the console assembly. The base and console for each of the Ellipticals are produced through separate, extensive assembly processes that occur entirely in Taiwan. With regard to the generalized base assembly, approximately 461 components, from which 450 originate from Taiwan, are transformed into the final base product by cutting, bending, welding, painting, and further assembling these components into bases for the Ellipticals. With regard to the generalized console assembly, approximately 33 components, from which 31 originate from Taiwan, are transformed into the final console product by wave soldering, molding, and further assembling these components into consoles for the Ellipticals. Though the base and console are shipped separately to Octane’s U.S. warehouses, the base and console are first brought together in Taiwan for a complete machine test that ensures the machine is working properly. We find that under the described assembly process, the components from China and the U.S. lose their individual identities and become an integral part of the articles, the Ellipticals, possessing a new name, character and use. The assembly process that occurs in Taiwan is complex and meaningful, requiring the assembly of various components into a base and a console, which are then further assembled into the final Elliptical product for testing before shipment from Taiwan. Additionally, aside from the significant number of components that originate from Taiwan, the Elliptical’s most significant components, the base and the console, were made from start to finish in Taiwan, which was an important consideration in HQ 735368. Moreover, the base and the console are combined for testing as the full Elliptical product in Taiwan. Thus, even though the

base and the console are shipped separately from Taiwan to the U.S., the identity of the product as an Elliptical is already intact in Taiwan during testing, and before shipment to the U.S, where any later combination in the U.S. should be seen as a minimal assembly process that does not result in a substantial transformation.

Similarly, the assembly of two of the Options, the stationary side steps and the upper body lockout kit, are entirely produced in Taiwan from starting components to finished products. Conversely, the adjustable dumbbells are made into their final form in China before reaching Taiwan. We find that under the described assembly processes, the side stationary steps and the upper body lockout kit are products originating from Taiwan because their components, Taiwanese metals, and manufacturing processes wholly originate and take place in Taiwan. However, we find that the adjustable dumbbells originate from China since packaging the adjustable dumbbells with the stationary side steps in the Cross Circuit Pro kit in Taiwan does not substantially transform the adjustable dumbbells into a new article of commerce having a new name, character or use. As noted in HQ 732498 and HQ 732897, the repackaging of the adjustable dumbbells and the stationary side steps is not a substantial transformation because the separate items are already in their finished forms, not modified or affixed to each other, or combined in a permanent matter. Accordingly, the individual products which make up these Options retain their individual countries of origin, such that the adjustable dumbbells in the Cross Circuit Pro kit are not considered products of Taiwan, but rather products of China.

Therefore, based upon the information before us, we find that the country of origin of the Ellipticals, the stationary side steps, and the upper body lockout kit is Taiwan for U.S. Government procurement purposes. However, the packaging of the Cross Circuit Pro kit is not sufficient to change the country of origin for the adjustable dumbbells from China to Taiwan, and the adjustable dumbbells remain a product of China.

HOLDING:

The components that are used to manufacture the Ellipticals are substantially transformed as a result of the assembly operations performed in the Taiwan. Therefore, the country of origin of the Ellipticals for U.S. Government procurement purposes is Taiwan. The Options for the Ellipticals retain their respective country of Origin because repackaging these products into Option kits for the Ellipticals does not substantially transform these products from their already final product form. Therefore, the countries of origin for U.S. Government procurement purposes of the stationary side steps, adjustable dumbbells, and upper body lockout kits are Taiwan, China, and Taiwan, respectively.

Notice of this final determination will be given in the *Federal Register*, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days after publication of the *Federal Register* notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Glen E. Vereb
Acting Executive Director
Regulations and Rulings
Office of International Trade

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